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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re G.D., a Person Coming Under the Juvenile
Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.D.,

Defendant and Appellant.

F078251

(Super. Ct. No. 11CEJ300193-2)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Gary Green,
Commissioner.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and
Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and DeSantos, J.

B.D. (father) appeals from the juvenile court's dispositional orders removing his now 17-year-old daughter, G.D.,¹ from his custody and ordering him to participate in parenting, domestic violence and mental health services. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

On August 4, 2018, G.D. reported to the police she and father had a physical fight. She had gone to his apartment to retrieve her personal belongings accompanied by her friend, Kayla, but he would not let her in and told her to leave. For the eight months before, she had been living with Kayla and Kayla's mother who lived nearby. Father agreed to the arrangement and provided for her needs. He also regularly communicated with her. When father told her to leave, she banged on the windows and front door. After a few minutes, he came out with pepper spray and warned her to leave or he was going to spray her. According to G.D., he pushed her, kicked her in the stomach, and sprayed the back of her neck with the pepper spray. They exchanged punches and she punched him on the head, causing him to fall. She and Kayla entered his apartment to get G.D.'s belongings. Paramedics evaluated G.D. and she refused to be transported to the hospital.

Kayla recorded the altercation on her cellphone, which father slapped out of her hand. G.D. could be seen telling father through the bedroom window to come out. He rushed out the front door with pepper spray in his hand held high and in the ready position. He told G.D. to leave his property and after a few words were exchanged, he pushed her. They punched each other, and she grabbed father and threw him to the ground where she continued to punch him in the head. The video ended with father slapping the phone out of Kayla's hand.

Father told the officers G.D. tried moving back home several days before but wanted to bring her boyfriend. When father refused, she got mad and left. When she

¹ G.D. will be 18 years old in June 2019.

returned on this date, he told her it was not a good time to talk and asked her to leave. She banged on the windows and yelled profanities. She also grabbed the water hose from the front yard and started spraying water onto the windows and door of his apartment. He stepped outside and told her if she did not leave, he was going to spray her. He sprayed a warning shot at the lower half of her body. He said G.D. attacked him and punched him multiple times when he was on the ground. He said she was strong and beat him up. The officers did not observe any visible injuries on him. They took the pepper spray from him and arrested him for unlawful possession and use of tear gas and willful cruelty to a child. They also placed a protective hold on G.D. and placed her in the custody of the Fresno County Department of Social Services (department).

Social worker Steven Ridley met with G.D. at the department's offices. She said father did not like her boyfriend because he thought he was a pimp, which she denied, claiming he was just a friend. She said her boyfriend was 20 years old and picked oranges for a living. Her mother was married to a register sex offender and she had no way of contacting her mother, her maternal grandmother, or anyone but her sister. She denied being involved in human trafficking, but her demeanor changed when Ridley broached the subject. She became more guarded and Ridley felt she was withholding something. While G.D. was waiting to be placed, she ran away.

The following day, Ridley spoke to G.D.'s half-sister who knew about the fight but had not seen G.D. When Ridley expressed his concern G.D. was being trafficked, the sister looked away and said she did not know anything but had spoken to G.D. She did not believe G.D. was going to school and did not know who she was associating with but thought they were "bad" people. Ridley also attempted to contact G.D.'s mother at her home but there was no answer at the door. He left information regarding a "Team Decision Meeting" (TDM) scheduled for August 7.

On August 6, 2018, social worker Monserrate McCray interviewed father at the county jail. He said G.D. was 13 when she began living with him and was doing well in

school and receiving school counseling. However, she changed in 10th grade when she started to hang around certain friends. Whenever she did not like what he said, she ran away from home. She physically assaulted him twice and police reports were generated as a result. He allowed her to live with Kayla's family, but she did not obey the house rules and they wanted her to leave. He took her back and things went well until she wanted to have her boyfriend over. Father met her boyfriend but did not approve because he was a "grown man" and his car reeked of marijuana. G.D. left with her boyfriend and later called father from Kayla's house saying she would be home the next day. He attempted to explain why he disapproved of her boyfriend, but she became upset and refused to discuss it. The following day, she returned for her belongings and they fought.

McCray asked father about the possibility of placing G.D. with her mother or another relative. Father stated the mother was not an appropriate caregiver because she was living with a registered sex offender which was why the court granted him full custody of G.D. in 2012. The mother was not involved in G.D.'s life and did not communicate with her. There were four adult sisters; two lived locally and two lived out of state but he did not know if they would tolerate G.D.'s behavior. He could not recall the phone numbers or addresses of friends or family members without having his cell phone or address book. He said he would be released after seeing the judge and would contact McCray right away. Father denied hitting or spanking G.D., stating he disciplined her by talking to her. He denied any criminal history, but admitted engaging in domestic violence with G.D.'s mother. He denied using drugs or alcohol or having any weapons in his home. No charges were filed against him.

On August 6, 2018, McCray spoke to G.D. by telephone. She agreed to return to the office but would not tell McCray where she was. She said she wanted to be placed with her maternal grandmother, Carolyn H. McCray agreed to call and start the clearance process. McCray contacted G.D.'s two sisters who lived locally but neither of them had seen or heard from G.D.

The following day, Carolyn and G.D. attended the TDM and the department placed G.D. with her that day. Neither parent attended the meeting.

On August 7, 2018, the department filed a dependency petition on G.D.'s behalf (Welf & Inst. Code, § 300,² subd. (b)(1) [failure to protect]), alleging father was unable to properly care for her because her behavior was out of control. It further alleged father made an alternate plan of care for her with a friend, but she was asked to leave the home because of her behavior. In its report for the detention hearing, the department explained G.D. was taken into protective custody because there was no one available to take care of her and the department did not offer father voluntary family maintenance services because he was arrested.

The juvenile court found prima facie evidence to detain G.D. pursuant to the petition and set a combined hearing for jurisdiction and disposition on September 12, 2018. The court also ordered supervised visits for both parents and ordered the department to offer father parenting, mental health and domestic violence services.

On September 10, 2018, father filed a JV-505 form ("Statement Regarding Parentage") (JV-505), informing the juvenile court he had established parentage by signing a voluntary declaration in June 2001. He attached a letter thanking the court for its assistance and stating he and G.D. had a close relationship until she began 10th grade. At that time, she started skipping classes, smoking "weed," acting disrespectfully, running away, and lashing out physically. He attempted to seek help through various agencies but was unsuccessful because of her behavior. He said he loved her with all his heart and was emotionally hurt because she assaulted him. His goal was to reunify with her. He asked the court to allow her to live at her grandmother's house while she and he attended counseling for a couple of months. He believed this would help them get closer

² All statutory references are to the Welfare and Institutions Code.

and allow him to have her home for the holidays and for the short time left before she turned 18.

The department recommended the juvenile court adjudge G.D. a dependent child as alleged and order her removed from father's custody. Father stated he could no longer handle G.D.'s behavior as she was defiant and did not follow the house rules. He believed she needed mental health services and anger management. In addition, he and G.D.'s sisters were concerned that she was at risk of being trafficked by her boyfriend. The department opined that returning her to his care would place her at a substantial risk of physical and/or emotional harm and there were no reasonable means to protect her without removing her. The department was concerned about G.D.'s defiant behavior and the recent physical altercation involving pepper spray. It was also concerned her boyfriend was trafficking her. The department however also believed that father's willingness to participate in reunification services made his prognosis of reunifying likely.

Father appeared with his attorney at the combined hearing in September 2018. His attorney objected to "some of the language in the petition regarding the allegation" but did not specify and did not request a trial on jurisdiction. He simply objected and submitted the matter. The court sustained the allegation without modification and adjudged G.D. a dependent child under section 300, subdivision (b)(1). During the dispositional phase of the hearing, G.D.'s attorney informed the court G.D. was doing well in her grandmother's care. She was scheduled to graduate from high school in the summer and looking forward to going to college. Father's attorney objected to the "offer of reunification services." He did not expound, merely stating father believed "counseling would be the primary case plan."

The juvenile court denied father's JV-505 because it had already deemed him to be G.D.'s presumed father. The court ordered G.D. removed from his custody and ordered him to participate in the same services previously offered to him. The court

denied G.D.’s mother reunification services (§ 361.2, subd. (a)) and set the six-month review hearing for February 2019.

DISCUSSION

Removal

Father contends there was insufficient evidence G.D. would be at risk of harm if returned to his custody and there were alternatives to removal such as providing him voluntary family maintenance services or allowing her to live with a relative or another appropriate caregiver. We disagree.

After the juvenile court adjudges a minor a dependent of the court, it has several dispositional options. For example, the court may declare dependency, allow the child to remain at home with a parent and order the parent to participate in services. (§§ 360, subd. (d), 362, subds. (a), (c).) The court may also declare the minor a dependent of the court, remove the child from parental custody and order the parent to participate in reunification services. (§§ 361, subds. (a)(1), (c), 361.5.) To remove a child from parental custody, the court must find by clear and convincing evidence there is or would be a substantial danger to the child’s physical or emotional well-being if the child were returned home, and there are no reasonable means by which the child’s physical health can be protected short of removal. (§ 361, subd. (c)(1).)

“The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) “A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

On a challenge to the juvenile court's dispositional finding, we do not review the juvenile court's reasoning. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) Rather, we review the evidence to determine whether substantial evidence supports it. We do so bearing in mind that the juvenile court's decision to order a child removed from parental custody must be supported by the heightened standard of clear and convincing evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Further, we view the evidence in deference to the juvenile court's determination and affirm the order even if there is evidence supporting a contrary conclusion. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

As a preliminary matter, we note that father, in effect, consented to G.D.'s removal. We refer to his statement to the juvenile court contained in his JV-505 in which he acknowledged his inability to manage her behavior and his request that she remain in the care of her maternal grandmother. Further, his trial attorney did not object to the department's recommendation for removal at the dispositional hearing. Thus, it is akin to submitting on the department's recommendation and forfeiting the issue on appeal. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589–590.) In any event, we conclude substantial evidence supports the juvenile court's removal order.

Father's relationship with G.D. had eroded to the point that they were engaging in physical violence. Although neither was seriously hurt during this latest incident, either or both could have been. G.D. was defiant, refused to live under father's rules, and was potentially engaged in criminal activity. Though father loved her and wanted to be reunited with her, he acknowledged that his attempts to help or control her were beyond his ability. On that evidence, the juvenile court could find G.D. would be at a substantial risk of harm if returned to his care. The court could also find there were no reasonable alternatives to prevent removal. Father's relationship with G.D. was so volatile, there was no services the department could offer them that would keep them safe in the home.

Further, appellate counsel's suggestion of placing G.D. with a relative or friend cannot be an alternative to removal since it requires removal.

Reunification Services

Father contends the only service he needed to reunify was family counseling. Therefore, it was error for the juvenile court to order him to participate in parenting, domestic violence, and mental health services. We disagree.

The purpose of reunification services is to "eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) To that end, the juvenile court must order the department to provide reunification services to a parent when it removes a child from parental custody (§ 361.5, subd. (a)) and the department must design a plan to address the problems necessitating the child's removal. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.)

Here, trial counsel objected to the proposed reunification plan by stating family counseling should be the primary goal. Family counseling, however, was not a component of his services plan and he did not ask the juvenile court to include it. To the extent he now argues it should have been included, we can infer based on the evidence that it was premature. As for the services ordered, we conclude they were reasonable. G.D. was removed from father's custody because he resorted to physical violence when he could no longer control her. The department could reasonably include parenting classes in his services plan to help him build a better relationship with her. It could also justify a domestic violence assessment given his history and a mental health assessment to address any mental health issues contributing to their conflict. We find no error.

DISPOSITION

The order is affirmed.